

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

UNITED STATES OF AMERICA

v.

DONALD GIBSON, II  
Defendant.

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CRIMINAL NO. H-12-306(1)

**PLEA AGREEMENT**

The United States of America, by and through Kenneth Magidson, United States Attorney for the Southern District of Texas, and Justin Blan, Special Assistant United States Attorney, and Defendant, DONALD GIBSON, II, and Defendant's counsel, pursuant to Rule 11(c)(1)(A) and/or 11(c)(1)(B) of the Federal Rules of Criminal Procedure, state that they have entered into an agreement, the terms and conditions of which are as follows:

**The Defendant's Agreement**

1. Defendant agrees to plead guilty to Count ONE of the Indictment. Count ONE charges Defendant with Conspiracy to Commit Health Care Fraud, in violation of Title 18, United States Code, § 1349. Defendant, by entering this plea, agrees that he is waiving any right to have the facts that the law makes essential to the punishment either charged in the Indictment or proven to a jury or judge beyond a reasonable doubt.

**Punishment Range**

2. The statutory maximum penalty for each violation of Title 18, United States Code, § 1349, is a term of imprisonment of not more than 10 years and a fine of not more than \$250,000. Additionally, Defendant may receive a term of supervised release after imprisonment of up to 3 years. Title 18, United States Code, §§ 3559(a) and 3583(b). Defendant acknowledges and understands that if he should violate the conditions of any period of

supervised release which may be imposed as part of his sentence, then Defendant may be imprisoned for the entire term of supervised release, without credit for time already served on the term of supervised release prior to such violation. Title 18, United States Code, §§ 3559(a) and 3583(e)(3). Defendant understands that he cannot have the imposition or execution of the sentence suspended, nor is he eligible for parole.

#### **Mandatory Special Assessment**

3. Pursuant to Title 18, United States Code, § 3013(a)(2)(A), immediately after sentencing, Defendant will pay to the Clerk of the United States District Court a special assessment in the amount of one hundred dollars (\$100.00) per count of conviction. The payment will be by cashier's check or money order payable to the Clerk of the United States District Court, c/o District Clerk's Office, P.O. Box 61010, Houston, Texas 77208, Attention: Finance.

#### **Immigration Consequences**

4. If Defendant is not a citizen of the United States, a plea of guilty may result in deportation, removal, and/or exclusion from admission to the United States, or the denial of naturalization. A plea of guilty may also result in Defendant being permanently barred from legally entering the United States after being deported, removed, and/or excluded. Defendant's attorney has advised Defendant of the potential immigration consequences resulting from Defendant's plea of guilty.

#### **Cooperation**

5. The parties understand this Agreement carries the potential for a motion for departure under § 5K1.1 of the United States Sentencing Guidelines. Defendant understands and agrees that whether such a motion is filed will be determined solely by the United States through

the United States Attorney for the Southern District of Texas. Should Defendant's cooperation, in the sole judgment and discretion of the United States, amount to "substantial assistance," the United States reserves the sole right to file a motion for departure pursuant to § 5K1.1 of the Sentencing Guidelines. Defendant further agrees to persist in that plea through sentencing, fully cooperate with the United States, and not oppose the forfeiture of assets contemplated in paragraph 22 of this agreement. Defendant understands and agrees that the United States will request that sentencing be deferred until that cooperation is complete.

6. Defendant understands and agrees that the usage "fully cooperate," as used herein, includes providing all information relating to any criminal activity known to Defendant, including, but not limited to, health care fraud. Defendant understands that such information includes both state and federal offenses arising therefrom. In that regard:

- (a) Defendant agrees that this Plea Agreement binds only the United States Attorney for the Southern District of Texas and Defendant, and that it does not bind any other United States Attorney or other component or unit of the Department of Justice;
- (b) Defendant agrees to testify truthfully as a witness before a grand jury or in any other judicial or administrative proceeding when called upon to do so by the United States. Defendant further agrees to waive his/her Fifth Amendment privilege against self-incrimination for the purpose of this Agreement;
- (c) Defendant agrees to voluntarily attend any interviews and conferences as the United States may request;
- (d) Defendant agrees to provide truthful, complete, and accurate information and testimony and understands any false statements made by Defendant to the grand jury or at any court proceeding (criminal or civil), or to a government agent or attorney, can and will be prosecuted under the appropriate perjury, false statement, or obstruction statutes;
- (e) Defendant agrees to provide to the United States all documents in his/her possession or under his control relating to all areas of inquiry and investigation.
- (f) Should the recommended departure, if any, not meet Defendant's expectations, Defendant understands he/she remains bound by the terms of this

Agreement and that he cannot, for that reason alone, withdraw his plea.

**Waiver of Appeal**

7. Defendant is aware that Title 28, United States Code, § 1291, and Title 18, United States Code, § 3742, afford a defendant the right to appeal the conviction and sentence imposed. Defendant knowingly and voluntarily waives the right to appeal the conviction and the sentence imposed, or the manner in which the sentence was determined. Additionally, Defendant is aware that Title 28, United States Code, § 2255, affords the right to contest or “collaterally attack” a conviction or sentence after the conviction or sentence has become final. Defendant knowingly and voluntarily waives the right to contest his conviction or sentence by means of any post-conviction proceeding.

8. In agreeing to these waivers, Defendant is aware that a sentence has not yet been determined by the Court. Defendant is also aware that any estimate of the possible sentencing range under the Sentencing Guidelines that he may have received from his/her counsel, the United States, or the Probation Office, is a prediction, not a promise, and such estimate **did not induce his plea** and is binding on neither the United States, the Probation Office, nor the Court. The United States does not make any promise or representation concerning what sentence Defendant will receive. Defendant further understands and agrees that the Sentencing Guidelines are “effectively advisory” to the Court. *United States v. Booker*, 125 S.Ct. 738 (2005). Accordingly, Defendant understands that, although the Court must consult the Sentencing Guidelines and must take them into account when sentencing Defendant, the Court is not bound to follow the Sentencing Guidelines nor sentence Defendant within the calculated guideline range.

9. Defendant understands and agrees that each and all waivers contained in the

Agreement are made in exchange for the concessions made by the United States in this Plea Agreement.

#### **The United States' Agreements**

10. The United States agrees to each of the following:

(a) If Defendant pleads guilty to Count ONE of the Indictment and persists in that plea through sentencing, and if the Court accepts this Plea Agreement, the United States will move to dismiss any remaining counts of the Indictment at the time of sentencing;

(b) At the time of sentencing, the United States agrees not to oppose Defendant's anticipated request to the Court and the United States Probation Office that he receive a two (2)- level downward adjustment under § 3E1.1(a) of the Sentencing Guidelines should Defendant accept responsibility as contemplated by the Sentencing Guidelines (U.S.S.G.);

(c) If Defendant qualifies for an adjustment under U.S.S.G. § 3E1.1(a) and Defendant's offense level is 16 or greater, the United States may move for an additional one (1)-level downward adjustment based on the timeliness of the plea or the expeditious manner in which Defendant provided complete information regarding his role in the offense.

#### **Agreement Binding - Southern District of Texas Only**

11. The United States agrees that it will not further criminally prosecute Defendant in the Southern District of Texas for offenses arising from conduct charged in the Indictment. This Plea Agreement binds only the United States Attorney's Office for the Southern District of Texas and Defendant. It does not bind any other United States Attorney. The United States will bring this Plea Agreement and the full extent of Defendant's cooperation to the attention of other prosecuting offices if requested.

#### **United States' Non-Waiver of Appeal**

12. The United States reserves the right to carry out its responsibilities under the Sentencing Guidelines. Specifically, the United States reserves the right:

(a) to bring its version of the facts of this case, including its evidence file and any

investigative files, to the attention of the Probation Office in connection with that office's preparation of a presentence report;

- (b) to set forth or dispute sentencing factors or facts material to sentencing;
- (c) to seek resolution of such factors or facts in conference with Defendant's counsel and the Probation Office;
- (d) to file a pleading relating to these issues, in accordance with U.S.S.G. § 6A1.2 and Title 18, United States Code, § 3553(a); and
- (a) to appeal the sentence imposed or the manner in which it was determined.

#### **Sentence Determination**

13. Defendant is aware that the sentence will be imposed after consideration of the Sentencing Guidelines, which are only advisory, as well as the provisions of Title 18, United States Code, § 3553(a). Defendant nonetheless acknowledges and agrees that the Court has authority to impose any sentence up to and including the statutory maximum set for the offense(s) to which Defendant pleads guilty, and that the sentence to be imposed is within the sole discretion of the sentencing judge after the Court has consulted the applicable Sentencing Guidelines. Defendant understands and agrees the parties' positions regarding the application of the Sentencing Guidelines do not bind the Court, and that the sentence imposed is within the discretion of the sentencing judge. If the Court should impose any sentence up to the maximum established by statute, or should the Court order any or all of the sentences imposed to run consecutively, Defendant cannot, for that reason alone, withdraw a guilty plea, and will remain bound to fulfill all of the obligations under this Plea Agreement.

#### **Rights at Trial**

14. Defendant represents to the Court that he is satisfied that his attorney has rendered effective assistance. Defendant understands that by entering into this Agreement, he surrenders

certain rights as provided in this Plea Agreement. Defendant understands that those rights include the following:

- (a) If Defendant persisted in a plea of not guilty to the charges, Defendant would have the right to a speedy jury trial with the assistance of counsel. The trial may be conducted by a judge sitting without a jury if Defendant, the United States, and the court all agree.
- (b) At a trial, the United States would be required to present witnesses and other evidence against Defendant. Defendant would have the opportunity to confront those witnesses and his attorney would be allowed to cross-examine them. In turn, Defendant could, but would not be required to, present witnesses and other evidence on his own behalf. If the witnesses for Defendant would not appear voluntarily, he could require their attendance through the subpoena power of the court.
- (c) At a trial, Defendant could rely on a privilege against self-incrimination and decline to testify, and no inference of guilt could be drawn from such refusal to testify. However, if Defendant desired to do so, he could testify on his/her own behalf.

#### **Factual Basis for Guilty Plea**

15. Defendant is pleading guilty because he is guilty of the charges contained in Count ONE of the Indictment. If this case were to proceed to trial, the United States could prove each element of the offense beyond a reasonable doubt. The following facts, among others would be offered to establish Defendant's guilt:

The Medicare Program is a federally funded health care benefit program affecting commerce as defined by 18 U.S.C. § 24. The Medicare Program is managed by the Center for Medicare and Medicaid Services ["CMS"] a component of the United States Department of Health and Human Services. Donald Gibson, II [GIBSON] was a medical doctor practicing medicine in the State of Texas and a Medicare provider with an active provider number. GIBSON applied for and obtained a Medicare provider number in order to submit claims to Medicare for reimbursement.

GIBSON entered into arrangements with multiple medical clinic owners and operators. As part of the agreements, GIBSON would authorize and allow medically unnecessary medical procedures to be billed to Medicare through his Medicare Provider number. GIBSON routinely ordered, prescribed and purportedly performed medically unnecessary diagnostic tests and medical procedures including allergy tests, vestibular tests, urodynamics, heart and lung tests and physical therapy among others.

From January 2007 thru July 2011, GIBSON and his coconspirators caused the submission of over \$19.4 million in claims through his Medicare Provider number. Medicare processed those claims and subsequently paid GIBSON approximately \$8.5 million. GIBSON knew most of the claims to Medicare were false because he neither evaluated the patients for nor performed the medical services billed. GIBSON also knew the only reason the patients would come to the various clinics were to be paid.

Sunday Joseph Edem [EDEM] was one of the individuals GIBSON conspired with in order to submit false claims to Medicare. EDEM had previously been a Medicare provider, but lost billing privileges due to a health care fraud conviction in California. EDEM controlled, managed, and operated business entities registered to other individuals in order to conceal his identity from Medicare. In his post-arrest statement, EDEM indicated in substance that he used straw-owners for the businesses because due to his previous health care fraud conviction he knew he would be scrutinized by Medicare if the businesses were in his name. EDEM thought that his revocation from participation in the program was only for seven years, but he did not want to deal with CMS.

EDEM was associated with Attentive Care Group (Attentive Care), St. Joseph Diagnostic Clinic, Inc. (St. Joseph Diagnostic), St. Joseph Medical Clinic, Inc. (St. Joseph Medical), and



Westpark Diagnostic, Inc. (Westpark). Around May 2012, another clinic, Advance Medical Clinic (Advance) was just beginning operations. Both St. Joseph Diagnostic and St. Joseph Medical submitted claims to Medicare either directly or through a physician associated with the entity. Westpark claims were submitted directly under the provider number of a physician.

St Joseph Diagnostic, St. Joseph Medical, Westpark, and Advance were all established under the names of EDEM associates including the mother of his child and other employees working at the clinics, EDEM signed the lease agreements for the business locations. In addition, EDEM received the majority of the monies generated through these businesses.

In approximately 2008, EDEM and GIBSON entered into an agreement. As part of the agreement, GIBSON would be the "Medical Director" of EDEM's medical clinics. GIBSON did not see or evaluate patients at EDEM's clinics. A nurse practitioner was hired to give the appearance of legitimate services being performed at EDEM's clinic. In order to get patients to clinic, EDEM would pay individuals, called navigators/marketers/recruiters, to refer Medicare beneficiaries to the medical clinic for diagnostic testing. The Medicare beneficiaries would go to the clinics to get paid for having the test performed.

EDEM and GIBSON billed Medicare through GIBSON's Medicare provider number by providing the patient information to the biller. Medicare deposited money from the fraudulent claims into a bank account owned and controlled by GIBSON. The reimbursement was split between biller, GIBSON and EDEM at 7%, 20% and 73% respectively. GIBSON paid EDEM either directly or through one of EDEM's associated businesses. A summary of the financial records showed approximately \$2.64 million in checks written from GIBSON's accounts payable to EDEM directly or to one of his associated entities including Attentive Care and St. Joseph.

As a result of the conspiracy, EDEM and GIBSON submitted claims, which they knew to

be fraudulent, to Medicare. In a recorded conversation between EDEM and a cooperating witness, they discussed a co-conspirator's clinic about which EDEM stated in substance that there were doctors at the co-conspirator's clinic who did not want to order any [diagnostic] tests because the patients do not need it. EDEM's suggestion was to fire those doctors and hire a doctor that will do what you want to do. EDEM stated that once GIBSON was hired, EDEM would go in and get rid of those doctors because GIBSON knows what to do and will order the tests.

Multiple interviews of Medicare beneficiaries who visited EDEM's and GIBSON's clinics reported being paid to go to the clinic. Generally, they also reported that the reason for going to the clinic was to receive a monetary kickback and not because of any medical need for diagnostic testing. These beneficiaries were recruited from all over Houston, Texas and surrounding areas, including homeless shelters.

On March 28, 2012, beneficiary L.E. was interviewed. L.E. reported being recruited by a number of individuals, including an individual who goes by the initials "C.G.," that would pay beneficiaries to receive medical services from clinics around Houston. He was paid \$50 to \$200 per visit. Among the clinics he reported visiting for money was St. Joseph's Clinic at 7457 Harwin, where he received \$50 and was treated by an African doctor. He recalled having lung tests in 2008 or 2009 and stated that he "did it just to get paid." He did not know who Dr. Gibson was nor has he ever seen him.

Records obtained from the search of 7457 Harwin, include patient files, sign in logs, and Medicare remittance notices. A patient file for beneficiary L.E. was located with dates in the file corresponding to the dates of service in Gibson's claim history and charged in count 7 of the indictment. The patient file contained a superbill, physician orders, and test results. None of the

physician orders contained a physician signature. There were no results from any pulmonary function tests. On the patient information sheet in the patient file, a name is listed in the referral section which has the initials C.G.

A sign in log for March 16, 2010, the date of service from count 7, was recovered in the search that contains the name of beneficiary L.E. and the name with initials C.G. on the line immediately above it. Both lines have the "referred by" name corresponding to the initials C.G. A remittance notice from Medicare to Gibson was seized which showed the Medicare payment for the claim charged in count 7.

Specifically, on or about March 23, 2010, GIBSON caused to be submitted claim number 452910082043040 with Medicare under his Medicare provider number, for various pulmonary function tests allegedly provided to a beneficiary identified as L.E., in the amount of \$310.00. Based on the above listed facts, GIBSON knew the claim to be false and intentionally caused it to be submitted to Medicare as part of the scheme to defraud.

The above acts took place in the Houston Division of the Southern District of Texas.

#### **Breach of Plea Agreement**

16. If Defendant should fail in any way to fulfill completely all of the obligations under this Plea Agreement, the United States will be released from its obligations under the Plea Agreement, and Defendant's plea and sentence will stand. If at any time Defendant retains, conceals or disposes of assets in violation of this Plea Agreement, or if Defendant knowingly withholds evidence or is otherwise not completely truthful with the United States, then the United States may move the Court to set aside the guilty plea and reinstate prosecution. Any information and documents that have been disclosed by Defendant, whether prior to or subsequent to this Plea Agreement, and all leads derived therefrom, will be used against

Defendant in any prosecution.

**Restitution, Forfeiture, and Fines**

17. This Plea Agreement is being entered into by the United States on the basis of Defendant's express representation that he will make a full and complete disclosure of all assets over which he exercises direct or indirect control, or in which he/she has any financial interest. Defendant agrees not to dispose of any assets or take any action that would effect a transfer of property in which he has an interest, unless Defendant obtains the prior written permission of the United States.

18. Defendant agrees to make complete financial disclosure by truthfully executing a sworn financial statement (Form OBD-500) by the deadline set by the United States, or if no deadline is set, prior to sentencing. Defendant agrees to authorize the release of all financial information requested by the United States, including, but not limited to, executing authorization forms permitting the United States to obtain tax information, bank account records, credit histories, and social security information. Defendant agrees to discuss and answer any questions by the United States relating to Defendant's complete financial disclosure.

19. Defendant agrees to take all steps necessary to pass clear title to forfeitable assets to the United States and to assist fully in the collection of restitution and fines, including, but not limited to, surrendering title, executing a warranty deed, signing a consent decree, stipulating to facts regarding the transfer of title and the basis for the forfeiture, and signing any other documents necessary to effectuate such transfer. Defendant also agrees to direct any banks which have custody of his assets to deliver all funds and records of such assets to the United States.

20. Defendant understands that forfeiture, restitution, and fines are separate

components of sentencing and are separate obligations.

#### **Restitution**

21. Defendant agrees to pay full restitution to the victim(s) regardless of the count(s) of conviction. Defendant stipulates and agrees that as a result of his criminal conduct, the victim(s) incurred a monetary loss of at least \$8,500,000. Defendant understands and agrees that the Court will determine the amount of restitution to fully compensate the victim(s). Defendant agrees that restitution imposed by the Court will be due and payable immediately and that Defendant will not attempt to avoid or delay payment. Defendant waives the right to challenge in any manner, including by direct appeal or in a collateral proceeding, the restitution order imposed by the Court.

#### **Forfeiture**

22. Defendant stipulates and agrees that the property listed in the Indictment's Notice of Forfeiture (and in any Supplemental Notices) is subject to forfeiture, and Defendant agrees to the forfeiture of that property. In particular, but without limitation, Defendant stipulates that the following specific property constitutes fraud proceeds and is subject to forfeiture:

(a) Approximately \$505,455.77 that Medicare would have deposited into JP Morgan Chase Bank Account x9076 if the invoices submitted by the Defendant had not been put on hold. The Defendant agrees that this money is the proceeds of health care fraud. The Defendant agrees that because the approximately \$505,455.77 constitutes criminal fraud proceeds, it should not be returned to him but should be returned to or retained by Medicare as partial restitution for Medicare's losses. The United States agrees that if the approximately \$505,455.77 is included as part of Medicare's loss in his (anticipated) restitution obligation and money judgment amounts, then the Defendant should receive a corresponding credit for the amount returned to Medicare.

(b) The funds and/or investments on deposit in the following accounts, which are restrained in Civil Action No. H-12-1582 (pursuant to an Agreed Preliminary Injunction, Doc. 11), pending in the U.S. District Court for the Southern District of Texas, Judge David Hittner presiding:

| <b>Bank</b>                    | <b>Account Title</b>                                 | <b>Account #</b>   |
|--------------------------------|------------------------------------------------------|--------------------|
| Morgan Stanley<br>Smith Barney | Donald Gibson                                        | xxx-xx3496-xxx     |
| Morgan Stanley<br>Smith Barney | Donald Gibson                                        | xxx-xx3560-xxx     |
| Morgan Stanley<br>Smith Barney | Donald Gibson                                        | xxx-xx3565-xxx     |
| Morgan Stanley<br>Smith Barney | MSB FBO Donald Gibson, II &<br>Melinda Gibson JT TEN | xxx-xx3589-xxx-x-x |
| Morgan Stanley<br>Smith Barney | Donald Gibson                                        | xxx-xx3593-xxx     |
| Morgan Stanley<br>Smith Barney | Donald Gibson                                        | xxx-xx3604-xxx     |
| Morgan Stanley<br>Smith Barney | Donald Gibson                                        | xxx-xx3606-xxx     |
| Wells Fargo                    | Donald Gibson                                        | xxxxxx2320         |
| Wells Fargo                    | Donald Gibson                                        | xxxxxx2398         |
| Wells Fargo                    | Donald Gibson &<br>Melinda Gibson                    | xxxxxx9037         |

Defendant agrees to the liquidation of the investments in the accounts to cash, at the election of the United States and in its sole discretion. Defendant acknowledges that Morgan Stanley previously advanced a loan that is secured by account xxx-xx3589-xxx and will be repaid from that account, and Defendant agrees that the loan can be paid off at the time of the account's

liquidation out of the account balance, again at the election of the United States and in its sole discretion.

(c) Real property located at 8 Sovereign Circle, Richmond, Fort Bend County, Texas, 77469, with a legal description of Sovereign Shores Estates Sec 1, Block 1, Lot 4, Acres 1.2249, and property tax identification number of 7232-01-001-0040-901 ("Sovereign Circle Property"); or the net sales proceeds after a sale of the Sovereign Circle Property. Defendant acknowledges that there is a mortgage on the property that it is in arrears. Defendant agrees to sign warranty deeds or waivers of his interest or other documents in order to facilitate the disposition of the property, if requested by the United States. Defendant understands and accepts that the United States may at its sole election decide not to forfeit the Sovereign Circle Property, including if it determines that allowing a foreclosure would be preferable to completing the forfeiture.

23. Defendant stipulates and agrees that the factual basis for his/her guilty plea supports the forfeiture of at least \$8,500,000 against him and in favor of the United States, and Defendant agrees to the imposition of a personal money judgment for that amount against him/her and in favor of the United States. Defendant stipulates and admits that one or more of the conditions set forth in Title 21, United States Code, § 853(p) exists. Defendant agrees to forfeit any of his property, or his interest in property, up to the value of any unpaid portion of the money judgment, until the money judgment is fully satisfied.

24. Defendant agrees to waive any and all interest in any asset which is the subject of a related administrative or judicial forfeiture proceeding, whether criminal or civil, federal or state. Defendant acknowledges that at the time of his arrest and the seizure of the firearms, he was using and addicted to controlled substances. If requested, Defendant agrees to voluntarily relinquish any interest in the firearms and related accessories (*e.g.*, magazines, gun bags) seized

at the time of his arrest; to waive any forfeiture notice requirements (whether administrative or judicial) and any associated deadlines to provide notice with respect to the seized firearms and accessories; and to take all steps and sign any documents which will facilitate a prompt forfeiture of any of the firearms or accessories. Defendant agrees to accept and not contest any administrative forfeiture of firearms and related accessories. Finally, Defendant agrees that if the United States elects not to forfeit some of the firearms and accessories, they may be released into the custody of his defense counsel for disposal. Defendant understands and agrees that he is not allowed to own or possess firearms.

25. Defendant consents to the order of forfeiture becoming final as to Defendant immediately following this guilty plea, pursuant to Federal Rule of Criminal Procedure 32.2(b)(4)(A).

26. Defendant waives the right to challenge the forfeiture of property in any manner, including by direct appeal or in a collateral proceeding.

#### **Fines**

27. Defendant understands that under the Sentencing Guidelines the Court is permitted to order Defendant to pay a fine that is sufficient to reimburse the government for the costs of any imprisonment or term of supervised release, if any. Defendant agrees that any fine imposed by the Court will be due and payable immediately, and Defendant will not attempt to avoid or delay payment. Defendant waives the right to challenge the fine in any manner, including by direct appeal or in a collateral proceeding.

#### **Complete Agreement**

28. This written Plea Agreement, consisting of 18 pages, including the attached addendum of Defendant and his attorney, constitutes the complete Plea Agreement between the



United States, Defendant, and his counsel. No promises or representations have been made by the United States except as set forth in writing in this Plea Agreement. Defendant acknowledges that no threats have been made against him and that he is pleading guilty freely and voluntarily because he is guilty.

29. Any modification of this Plea Agreement must be in writing and signed by all parties.

Filed at Houston, Texas, on April 1, 2013

Donald Carmon II  
Defendant

Subscribed and sworn to before me on April 1, 2013

DAVID J. BRADLEY, Clerk  
UNITED STATES DISTRICT CLERK

By:

Glenn A. Hesse  
Deputy United States District Clerk

APPROVED:

Kenneth Magidson  
United States Attorney

By:

Justin Blan  
Justin Blan  
Special Assistant U.S. Attorney  
Southern District of Texas  
Telephone: 713-567-9000

Paul Nugent  
Paul Nugent  
Attorney for Defendant

Heather Peterson  
Heather Peterson  
Attorney for Defendant

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

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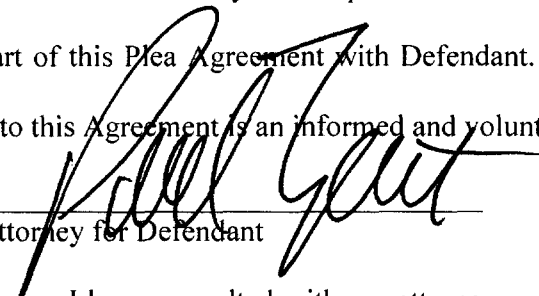
DONALD GIBSON, II  
Defendant.

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CRIMINAL NO. H-12-306(1)

PLEA AGREEMENT - ADDENDUM

I have fully explained to Defendant his/her rights with respect to the pending Indictment. I have reviewed the provisions of the United States Sentencing Commission's Guidelines Manual and Policy Statements and I have fully and carefully explained to Defendant the provisions of those Guidelines which may apply in this case. I have also explained to Defendant that the Sentencing Guidelines are only advisory and the court may sentence Defendant up to the maximum allowed by statute per count of conviction. Further, I have carefully reviewed every part of this Plea Agreement with Defendant. To my knowledge, Defendant's decision to enter into this Agreement is an informed and voluntary one.

  
Attorney for Defendant

Date 4/1/13

I have consulted with my attorney and fully understand all my rights with respect to the Indictment pending against me. My attorney has fully explained and I understand all my rights with respect to the provisions of the United States Sentencing Commission's Guidelines Manual which may apply in my case. I have read and carefully reviewed every part of this Plea Agreement with my attorney. I understand this Agreement and I voluntarily agree to its terms.

  
Defendant

Date 4/1/2013